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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/974,973	10/12/2001	Paul D. Hanke	1533.1230001/MAC/RGM	8115

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02/11/2004

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EXAMINER
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SLOBODYANSKY, ELIZABETH

ART UNIT	PAPER NUMBER
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1652

DATE MAILED: 02/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/974,973

Applicant(s)

HANKE, PAUL D.

Examiner

Elizabeth Slobodyansky, PhD

Art Unit

1652

--The MAILING DATE of this communication appears on the cover sheet with the corresponding address --

THE REPLY FILED 23 January 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☒ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: 3.

Claim(s) rejected: 1,2,5-8,12,13 and 19-23.

Claim(s) withdrawn from consideration: 9-11 and 14-18.

8. ☒ The drawing correction filed on 23 January 2004 is a) ☐ approved or b) ☒ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

*E. Slobodyansky*

Elizabeth Slobodyansky, PhD  
Primary Examiner  
Art Unit: 1652

Continuation of 2. NOTE: The scope of the claims has been changed. Claims 1 and 19 have been amended to recite a sequence that is "at least 90% identical to SEQ ID NO:2". Thus, the amendment changes the scope of the claims requiring further consideration and search. Furthermore, the amendment raises the issue of new matter as there is no apparent support for such structural limitation. The amendment to the specification appears to be misleading as stating "The feedback resistant pyruvate carboxylase gene of the present invention is deposited in both the *Corynebacterium glutamicum* host cell (B-11474) and the *E. coli* host cell (B-30293). It appears that *C. glutamicum* NRRL B-11474 was deposited prior to the instant invention by different inventors and was used by the current inventor to clone the pyruvate carboxylase gene therefrom. Said clone has been deposited by the inventor in an *E. coli* host cell under deposit NRRL B-30293. Further, there is no evidence provided that the strain "BF-100" is the same strain as "NRRL B-11474" and not NRRL B-30293, for example. For this reason the drawing correction can not be approved at this time.

Continuation of 5. does NOT place the application in condition for allowance because: for the reasons of record in view of non-entry of the amendment. The claims as amended would require at least 112, 1st paragraph, rejections as not enabled and as NRRL B-30293 is not described. Further, the claims would require 112, 2nd paragraph, rejection as the sequence at which the specific positions are indicated is not defined. Applicant's arguments are persuasive with regard to the Sequence Listing.